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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,158	01/23/2004	Sylvie Genard	LOREAL 3.0-066 (M874US)	8139
530 7590 03/22/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER AUDET, MAURY A	
			ART UNIT 1654	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/22/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/764,158	<b>Applicant(s)</b> GENARD, SYLVIE	
	<b>Examiner</b> Maury Audet	<b>Art Unit</b> 1654	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 20-26 and 29-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 1-19,27 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/30/03</u> | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION*****Election/Restrictions***

Applicant's election of Group I in the reply filed on 6/26/06 (Original Restriction requirement under former Examiner Shirali) is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). A second supplemental Restriction requirement was sent by this Examiner on 9/25/06, including an election of species. Thereafter, on 12/12/06, via Interview, the Examiner rejoined Group II with Group I, such that this is now the elected invention (collectively now Group I, claims 1-19, 27-28, 32-38, and 45). Additionally, a species election as to a method of making a complete identified compound species of Formula I was required, to which Applicant elected the compound shown on page 3 of the restriction response of 12/18/06. Claims 1-19 and 27-28 read on the elected species.

Claims 20-26 and 29-45 are withdrawn from consideration as being withdrawn from non-elected species (claims 32-38 and 45) or invention (claims 20-26 and 29-44). Claims 1-19 and 27-28 are examined on the merits as drawn to the elected Group I and species.

***The Invention***

Paragraph 250 of Applicant's Published Application describes the method of preparing the presently elected/claimed invention, namely: "Synthesis of the KPV Tripeptide Diacetyl Derivate under the form of Various Salts", in it's diamide form.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipton et al. (US 5,028,592) in view of Kauvar et al. (US 5,786,336).

Lipton et al. teaches a method of making diacetyl KPV tripeptides and salts thereof (one of a number of patents Lipton et al. have since the late 80's and into the '90's on such KPV analogs and methods of making the same), for the treatment of various cellular disorders (e.g. inflammation) (see entire document, especially abstract; col. 8, line 55+). Lipton et al. was not found to expressly teach the synthesis of a KPV tripeptide "diamide" per se.

Kauvar et al. teach the synthesis of tripeptides as well (not KPV per se) and as to the diamide form of tripeptides specifically; "It has further been found that in order to exert intracellular effects, the compounds of the invention are preferably supplied as the diamides or diesters or hybrids thereof" (col. 2, lines 37-40).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to synthesize the well known KPV tripeptide in its diamide form in the diacetyl KPV tripeptide synthesis methods of Lipton et al. because Kauvar et al. advantageously teach that in the peptide arts it was known that the diamide form of tripeptide synthesis allows for such tripeptides to optimally exert intracellular effects and one of ordinary skill in the peptide

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arts would have been motivated to modify the KPV tripeptide synthesis method of Lipton et al. to incorporate the diamide form, to allow greater intracellular effects by the KPV tripeptide in the methods of using the KPV tripeptide in intracellular disorders (e.g. inflammation) described by Lipton et al.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

### ***Conclusion***

No claims are allowed.

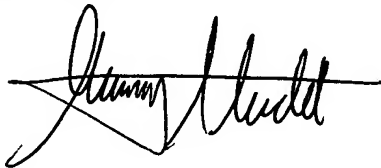
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maury Audet whose telephone number is 571-272-0960. The examiner can normally be reached on M-Th. 7AM-5:30PM (10 Hrs.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA, 03/17/2007

A handwritten signature in black ink, appearing to read 'Maury Audet', with a horizontal line drawn through the middle of the signature.

MAURY AUDET  
PATENT EXAMINER